UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS

CR-04-00038-001

February 22, 2006 9:20 a.m.

UNITED STATES OF AMERICA -V- ERIC JOHN TUDELA MAFNAS

PRESENT: HON. ALEX R. MUNSON, Chief Judge Presiding

SANAE SHMULL, Court Reporter
K. LYNN LEMIEUX, Courtroom Deputy
TIMOTHY MORAN, Assistant U. S. Attorney
HOWARD TRAPP, Counsel for Defendant
ERIC JOHN TUDELA MAFNAS, Defendant

FILED
Clerk
District Court

FEB 2 2 2007

For The Northern Mariana Islands
By
(Deputy Clerk)

PROCEEDING:

SENTENCING

Defendant was present with Defense Attorney Howard Trapp. Government by Timothy Moran and Jamie Bowers, AUSAs. Also present was U.S. Probation Officers Margarita Wonenberg and Melinda Brunson. FBI Special Agent Joe Arthur was also present.

Attorney Trapp made objections to late filing of suggested enhancements to the PSR by the Government. Government argued.

There were objections to the Presentence Investigation Report and these objections were discussed.

Government, by AUSA Jamie Bowers, argued the enhancement application of a 2D1.1 to the guidelines.

Government called witness:

CARL CABRERA. DX. (No CX.)

EDWARD MANALILI (Police Officer, DPS). DX. Government moved to admit Exhibit 1 into evidence; no objection, Court so ordered. (No CX.)

Government argued for the enhancements. Attorney Trapp argued against the enhancements. Court, after hearing all argument, **DENIED** both enhancements.

Court adopted the presentence investigation report, as amended, and instructed the Clerk to file the report, under seal, and that the report be made available if the judgment is appealed. The

probation officer's recommendation shall also be placed under seal. No objection by the parties.

Government had no objection to the advisory guidelines that the Court intends to be guided; Defense had no objections. Court adopted the advisory guidelines.

Government called a witness in relation to "harm to the community":

JOHANNES TAIMANO. (Police Officer, DPS). DX. (No CX.)

Government recommended that this defendant receive a sentence of **235 months** and a fine of **\$50,000**. Defense recommended a sentence at the low end of the guidelines and that if at all possible, that he be confined in a facility at Sheridan, Oregon.

Court recessed at 11:00 a.m. and reconvened at 11:15 a.m.

SENTENCE: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant ERIC JOHN TUDELA MAFNAS is hereby sentenced to 235 months imprisonment. Sixty months as to Count I; 120 months as to Count II; 235 months as to Count IV; 60 months as to Count V; and 60 months as to Count VII. The sentences shall be served concurrently. The defendant will receive credit for time served. After release from imprisonment defendant shall be placed on four years supervised release. The term of supervised release will require that the defendant comply with the following conditions:

- 1. The defendant shall not commit another federal, state, or local crime;
- 2. The defendant shall not unlawfully possess a controlled substance and shall refrain from any unlawful use of a controlled substance. He shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter not to exceed eight tests per month as directed by the U.S. Probation Office;
- 3. The defendant shall submit to the collection of a DNA sample at the direction of the U.S. Probation Office;
- 4. The defendant shall comply with the standard conditions of supervised release as set forth by the U.S. Sentencing Commission;
- 5. The defendant shall be prohibited from possessing a firearm or other dangerous weapon or having such weapon(s) at his residence;
- 6. The defendant shall participate in a program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether he has reverted to the use of drugs. The defendant shall also make co-payment for the program at a rate to be determined by the U.S. Probation Office;
- 7. The defendant shall seek and maintain gainful employment; and

8. The defendant shall complete 400 hours of community service under the direction of the U.S. Probation Office.

It was further ordered that the defendant pay to the United States a special assessment fee of \$600 to be paid immediately after sentencing. No fine was imposed.

No objection to the sentence by the attorneys. Defendant was advised that he had 10 days in which to file an appeal to the sentence imposed. Further, he was advised that if he cannot afford an attorney for the appeal the Court will appoint one for him.

Attorney Trapp requested that the defendant be allowed to visit his grandmother, who is frail and not expected to live much longer, before he is transported to the mainland. Court ordered that he be allowed to visit her, in the accompaniment of the U.S. Marshal, for no more than 30 minutes.

Defendant was remanded to the custody of the U.S. Marshal.

Adj. 11:30 a.m.

K. Lynn Lemieux, Courtroom Deputy



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

DEPARTMENT OF ROBLIC SAFETY Investigation Division Saipan, CM 96950 0

MEMORANDUM

DATE: 1/31/85

00038

: Director of Public Safety

FROM

: All Personnel

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SUBJECT: Use of Firearm

All DPS personnel must abide department regulations, and the law in the use of firearms, especially in discharging or shooting. It is the policy of this department that whenever a member of this department uses a firearm, impessigation shall be interested. initiated by a supervisor.

This initial report of the supervisor will then be forwarded to the internal Affairs to continue the investigation. to continue the investigation.

Privately registered firearms such as: .22 Caliber rifles and 410 Guage shotguns are also applicable to this policy.

Upon determination that the case warrants criminal actions the case will be immediately transferred to the Investigation Unit for follows. Affairs will monitor the case, and ascertain if any departmental rules or regulations are violated. Violation of this policy can result in more serious disciplined action than an oral or written reprimand, it will be suspension or termination from employcriminal offense and resulted with insufficient evidence for profecution then this policy shall be applied administratively for action of suspension or termination. ment. In the event that criminal action is pursued for possible prosecution of a

This Order repeal General Order 005-82, April 26, 1982, Section 1, Use of Firearm by Police Officer through its entirety, and General Order 1949-82, November 03, 1982, Policy for the Immediate Possession of Firearm though its entirety. $\stackrel{\circ}{N}$

FELIX B. CABRERA Director, DPS 25

DEPARTMENT OF PUBLIC SAFETY NORTHERN MARIANA ISLANDS COMMONWEALTH OF THE SAIPAN

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	Date of Issue:	Effective:	No.
GENERAL ORDER	01/31/85	02/18/85	85-01
Reference :		Recinds:	
Index As:			
Firearms fo	Firearms for Police Service, Use of Firearms.	of Firearms.	
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Firearms for Police Service, Use of Firearms. SUBJECT

To establish guidelines relating to firearms authorized for use by Department of Public Safety personnel, and the investigations of cases in which death or injury results from the use of firearms by Department personnel. PURPOSE

THIS ORDER CONSISTS OF THE FOLLOWING NUMBERED SECTIONS:

OBJECTIVE

POLICY

GOVERNMENT OWNED FIREARMS ≥ >

AUTHORIZED AMMUNITION

INSPECTION PROCEDURES

CARE, CUSTODY AND OTHER RESPONSIBILITIES Ξ.

SUBMACHINE GUN ₹

JUSTIFIABLE USE OF FIREARMS ΛΞ. UNJUSTIFIABLE USE OF FIREARMS

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INVESTIGATIVE PROCEDURE UNATTENDED FIREARMS

MEDICATION AND/OR ALCOHOL

FIREARMS TRAINING

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OBJECTIVE BY SOME OF THE OBJECTIVE BY SOME OF THE OBJECT O personnel are established. To establish a consolidated policy concerning firearm regulations for Department of Public Safety personnel and interested parties.

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POLICY
ODD Department of Public Safety police officers shaped be adequately force, it will remain an absolute necessity for porce officers to be armed for the protection of the general public as themselves. As long as members of society are victims of violent crime and officers in the performance of their duties are confronted with deadly

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issued for police service, as deemed necessary, and may be carried on the Department's inventory.

1. 38 caliber revolver
2. 357 magnum revolver
3. 9mm parabellum semi-auto pistol
4. 45 caliber semi-automatic pistol
5. Shotguns (.12 gauge)
6. 223 caliber rifle (AR.15.) The following firearms, which are government owned, may be

- 223 caliber rifle (AR-15) Ö
- 30 caliber carbine
- 30-30 winchester rifle
 - Automatic rifles
- .45 caliber sub-machine gun

Page 5 of ₹2

- .9mm parabellum sub-machine
- M-16 caliber rifle

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Specification for Revolvers œ

357 caliber revolver, Smith & Wesson, Model 19, or the .38 nel of the Department of Public Safety shall either be the The approved and authorized revolvers to be issued to personcaliber revolver, Smith & Wesson, Model 15 and/or Model 60. The revolvers shall have a blue, chrome, or stainless steel finish ength not shorter than 2 inches for plainclothes personnel and uniform personnel performing non-patrol functions. The revolvers described above shall be the standard issue. The with a four to six inch barrel for uniform patrol and a barrel Director at his/her discretion may cause other types and/or makes of revolvers to be issued.

AUTHORIZED AMMUNITION

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All ammunition used must be safe and in good condition and shall be as follow:

- jacketed hollow point in appropriate bullet weights to match authorized pistols and revolvers listed in Paragraph III. A. of the caliber, but in no case less than 110 grains nor more than 240 grains weight. Authorized calibers are those to fit the Pistol/Revolver ammunition shall be standard commercially manufactured lead ball, semi-jacketed, full jacketed, or semithis Order. Magnum load pistol ammunition shall not be used
- ed lead ball, semi-jacketed, full jacketed, or semi-jacketed hollow point in appropriate bullet weights to match the caliber. Authorized calibers are those to fit the authorized rifles Rifle ammunition shall be standard commercially manufacturlisted in paragraph III. A. of this Order. ന്
- factured double aught (00). Authorized calibers are those to lit the authorized shotguns listed in Paragraph III. A. of this Shotgun ammunition shall be standard commercially manu-Ċ
- vice use is prohibited. This type of ammunition is to be used The use of "wad cutter" or "reloaded" ammunition for ser only for training purposes. a.
- the revolver or one extra clip/magazine of ammunition for the When carrying your duty firearm, and/or supplemental firearms, officers shall carry at least 12 rounds of ammunition for ui

GENERAL ORDER NO. 85-01

- Ammunition issued shall be turned-in for exchange six months the condition of the ammunition is adversely affected, such as from the date of issue, or sooner if circumstances indicate that exposure to inclement weather.
- The Armory Unit shall receive the ammumition turned-in and store it for target practice. $\frac{Q}{Q}$ Ġ
- Target practice

 Authorized by the Director of Pubro Safety or his/her designee. All ammunition not issued by the Department shall not be used or carry when on-duty or off-duto exception to the Ï

INSPECTION PROCEDURES

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Inspection of Department's Firearms

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- All Department's firearms are to benept in serviceable condition at all times.
- negessary. All firearms found not to be serviceable are to be repaired or shall not be used for official duty by The Department of Public Safety That Inspector is ment's firearms to be inspected by whe Department of Public Safety Armorer every six (Qmmonths, or when personnel concerned, and if no need to the Department charged with the responsibility of Fausing all Depart shall be disposed off,
- It shalf be the responsibility of all Bureau and/or Division Heads to insure that monthly firearms inspections are conducted. က
- Field Supervisor at each Predinct shall conduct firearms inspection at roll-call formation.
- Supervisors in-charge of plain thes units or units composed of personnel on special or temporary duty assignments are also to donduct firearms inspection before such personnel assume duty. ۵

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GENERAL ORDER NO. 85-01

- Supervisor (s) conducting firearms inspection shall pay particular attention on the following conditions and/or functions:
- Proper single and double action; =
- rotation and latching; Proper cylinder 5
- Firing pins and sights (sheared pin or damaged sights); ê
- Bore and chambers (rust, dirt, pin or damaged sights); 4
- Cartridges (dents, primer, non-crimped proectile); 2
- Proper Slide action and ejection. 6
- partment of Public Safety Armorer for inspection Unserviceable firearms are to be sent to the Deand repair. ö

CARE, CUSTODY AND OTHER RESPONSIBILITIES 5

General Responsibilities ċ

- keeping and storage of weapons and equipment to insure dental usage (i.e., theft from home or automobile, the use of a firearm by a minor child or any unauthorized person). Personnel suffering the loss or theft of any firegence shall be disciplined and required to pay for the replacement of same if it is item of issue. (As stated in against loss, theft, or misappropriation resulting in acciarm, or issued equipment through carelessness or negli-Personnel are to exercise care and caution in the safe-Item XI, Unattended Firearms).
- revolver, issued equipment, a numbered police report Upon discovery of the theft or loss of any firearm or will be written by the victimized officer to the Director of Public Safety via appropriate channels.
- Officers must always exercise precaution concerning bystanders. Injury to innocent bystanders is not necessarily excused by the fact that the policeman would have been legally justified in shooting to accomplish arrest. The isk of death to any person should be minimized. က

Generally, an officer should not shoot at a fleeing felon whom he believes to be a juvenile, profess the escape of person, in such a case he may shoot to prevent the such a felon poses a serious threat too the life of another escape of the felon.

An officer should not fire his/her weapon while he/she is running, because running adversely affects accuracy; rather, he/she should stop, take caedul aim, fire, then Officer shall never cock their sidearn until ready to fire. continue to run if necessary. 'n

က every instance where a firearm ip@ischarged by personnel of this Department, a detailed written report shall immediately be prepared and submitted to the Director of Public Safety. ö

All unauthorized use of a firearm whether on-duty or off-duty is prohibited and is subject to appropriate disciplinary action.

shall not be loaned to anyone other wan another police officer of the Department with proper authorization. Department owned weapons issued to individual officers

To destroy an animal which the officer has reasonable cause to believe is so severely injured that there is no probability that its life or usefulness can be saved, or where the officer or another is agracked by humanendangering animals, such shooting—shall be recorded.

firearms shall not be unnecessarily busplayed, brandished or manipulated by officers, whether within police To prevent actidental discharge, Display of firearms: buildings or in public. ö

Coading and unloading is to be accomplished with the utmost regard for the safety of oneself and persons in the immediate area. =

On-Duty Status

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key, Department's service firearm, and a minimum of 12 rounds of extra ammunition for the Nevolver or at least tion, uniformed patrol officers while on duty will have All sworn police personnel when on-the ty shall be in possession of their identification cards Dadges, handcuffs/ one extra clip/magazine for semi-automatics. In addi-

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in their possession such other gear as may be required such as batons, flashlights, whistles, mace, rain gear, etc. Department's firearms shall be carried so they may be readily withdrawn from a holster.

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- Uniformed officers are to use holsters authorized by the Department.
 - for utility and safety purposes and may be worn Plainclothes officers may use any holster designed optionally on either the rights or left side.
- Personnel appearing in court to testify must first unload their firearms and secure them in a depository designated for that purpose in the Office of the Court Bailiffs before entering the confines of the Court Room proper. က
- arms in the confines of the Detention Facility. Personnel not assigned to lock-up duties, who are on official business in the Detention Facility, are to unload their firearms and secure same in a depository designated for that Personnel assigned to lock-up duties are not to carry firepurpose with the Duty Officer.

Off-Duty Status ပ

carrying of a said firearm or other police equipment would be attired in swimming suit at the beach or picnic, etc.). The wea-All sworn personnel are required to be in possession of their dentification cards and badges when off-duty except when the very conspicuous or impractical due to the situation (i.e., pon and equipment shall, however, be kept readily accessible at all times.

SUBMACHINE GUN (Automatic Rifle) \equiv

Restrictions

- lified to use a submachine gun, shall be authorized to use Only personnel who have been trained and properly quathe submachine gun furnished by the Department.
- The use of the submachine gun shall be considered an alternate to the use of the police shotgun under appropriate circumstances and is not intended as a replacement for the shotgun or high power rifle. 7

GENERAL ORDER NO. 85-01

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- Submachine guns shall not be discharged in any situation where there exists any risk of injury to innocent person. Personnel armed with submachin@guns shall withhold automatic fire rather than risk accidental injury or death.
- The use of submachine guns, regardless of type or make, is prohibited except those issued by the Department of Public Safety.
- Submachine guns shall not be $ded \frac{d}{dt} discriminately or in anticipation against mere threat of <math>\frac{d}{dt} dt$ at tack or resistance. Ġ

Procedure œ

- of personnel in the use of subrachine guns before authorizing the issuance of submachine guns for stake-The Director of Public Safety, Chiet of Police, or his/her designee are responsible for ascertaRing the competency out/apprehension raids.
 - Submachine guns to be furnished under this Order shall The submachine gun shall be Carried with wooden be carried as follows:

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- stock extended in anticipation of use except when the bolt closed and the selector lever pointing to the "semi-automatic" position. The "open bolt" firing gun anall be carried with transporting the weapon. ġ
- The "closed bolt" firing gun Mall be carried with a round in the chamber and the selector lever pointing to the "safe" position. ú
 - ale of the gun pointing either upward or down-O The submachine gun shall be serried with the muzward, in a safe direction. ö
 - ward, in a safe direction. machine gun in order to minimize The risk of indiscriminate crossfire. All others are autharized to carry shotstakeout shall be authorized to $c_{\rm gry}^{\rm q}$ or use the subguns, carbines, or rifles on tactical needs. Additional submachine gun authorizations will be Made only in accordance with this Order. က်

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GENERAL ORDER NO. 85-01

- Should a relief from duty be deemed necessary, it shall
 be with compensation and not be construed to be a disciplinary action, but rather an administrative course of
 action for the purpose of:
- Relieving the officer from further performance of field duties while undergoing the emotional stress of having used deadly force.
- b. Permitting an objective investigation into the matter under a more restrained atmosphere.
- Maintaining the public's confidence in the police force.
- In a case in which a relief from duty had been imposed, the officer shall be restored to his original assignment as soon as it is determined from the investigation that his/ her action was justified.

B. Expeditious Investigation

- Without sacrificing objectivity and completeness, the investigation into any duty-connected shooting resulting in death or injury shall be expeditiously conducted by the Chief of Police, supported by an investigation performed by the head of any Bureau or independent unit or any of his/her personnel prior to take over of the investigation by personnel from the Chief's office.
- The completed investigative report upon the approval of the Chief of Police shall be forwarded to the DPS Director who will forward the report to the Attorney General for his/her review and determination whether or not the matter shall be presented to Court.

C. Summary

- Responsible officer reports shooting incident to his/her immediate superior in a timely manner.
- Responsible officer and his/her Superior Officer submit detailed written reports to the Director immediately.
- Superior Officer, Director and/or Chief of Police confer to determine if the officer is to be administratively removed from duty.

4. The Chief of Police will conduct a complete formal investigation of the shooting, subm(t) his/her findings to the Director for his/her disposition.

the Director for his/her dispositions the Director for his/her dispositions of the Director and the Chief of Police shall determine if formal charges are warranted. If sq. 3 copy of the formal report with the Director's recommendation should be forwarded to the Attorney General for his/her action.

UNATTENDED FIREARMS

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A. Personnel will not leave any firearm, official or unofficial, in any unattended vehicle, motorcycle, or seas of public access except when the vehicle or area is properly secured and remains within sight of the officer.

EXCEPTION: Reference paragraph VIDA, 1, personnel are authorized to place firmms in the locked trunk of their vehicles for safekeeping when they are engaged in an activity in which it is not appropriate that they wear a firearm (i.e., attired in swimming truens at the beach) but only for such time as they are engaged in the activity and there is no safer place available to store the firearm.

- B. Personnel may lock rifles and/or shotgues in the security boot provided or in the trunk of Departmental vehicles before leaving the vehicle unattended. Howeven this condition shall not exceed a period of 30-minutes.
- C. Public access means a place or thing to which the people as a whole (the public) have permission by liberty to enter, approach, or pass to and from in the negmal course of events i.e., shopping centers, beaches, parking the public streets, etc.

An employee's office or desk of which he/she has exclusive use is not an area of public access, except by invitation. Regardless, firearms shall not be left unattended in these areas when persons other than employees of the Defartment are present. In no case shall a firearm be stored unattended in plain sight, nor shall they be left in an office or destafter the employee's conclusion of tour of duty.

D. Firearms stolen as a result of non-compliance with this Order, if used in the commission of a crime, or if used to inflict per-

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The firearm instructors must undergo bkannual instructors recertification training.

All personnel to be issued police firearmus) shall be trained in

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the use and maintenance of such firearm (S)

GENERAL ORDER NO. 85-01

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sonal injury will result in severe disciplinary action for the officer involved.

the firearm in question is not used in the commission of a compliance with this Order shall be dealt with severely, even if Damage to or loss of a DPS-owned firearm as a result of non-

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MEDICATION AND/OR ALCOHOL

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Anytime an officer HAS CONSUMED ALCOHOL OR — is taking medication, prescription or otherwise, that may affect his/her mental or physical faculties, it is that officer's responsibility to so inform his/her supervisor. If the medication produces side effects incompatible with duties requiring the bearing of arms, the supervisor shall not allow the officer to assume duties requiring the bearing of firearms or other duties that might be adversely affected.

FELIX B. CABRERA

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in addition whenever an officer is off-duty, not in performance of an official assignment, he/she shall not carry a firearm or have in his/her mmediate possession a firearm while consuming or under the influence of alcohol or medication.

FIREARMS TRAINING

- All sworn police officers, unless excused for good cause by the Director, must qualify with the firearm (s) they carry for ë
- DPS will provide ammunition for qualification with all
- 250 points. The following breakdown of scores shall be used The present pistol course used by DPS allows a maximum of with this course. ပ

- EXPERT 240 to 250 points The Bureau of Administrative Training shall schedule annual firearms qualifications of Special Order (signed by the Director) or as often as necessary to ensure compliance with this ä

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official use no less than once each year. œ

Government owned firearms.

SHARPSHOOTER ~ NOT QUALIFIED - MARKSMAN QUALIFIED 170 to 219 points 220 to 229 points 0 to 169 points 230 to 239 points

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF PUBLIC SAFETY

PROFICIENCY O.F CERTIFICATION

DATE:

•	:
NAME: KANK: (LAST) (MIDDLE)	: <u>Y</u>
AL SECURITY:	IVISION:
TYPE OF FIREARM QUALIFIED:TAR	TARGET SCORE:
SCORING QUALIFICATION	
0 TO 169 POINTS = NOT QUALIFIED	
170 TO 219 POINTS = QUALIFIED	
220 TO 229 POINTS = MARKSMANSHIP	
230 TO 239 POINTS = SHARPSHOOTER	
240 TO 250 POINTS = PROFESSIONAL/EXPERT	ERT
	1
RANGEMASTER/INSTRUCTOR RANK	DATE
DIRECTOR OF PUBLIC SAFETY	DATE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF PUBLIC SAFETY

ARMORY DIVISION

My signature, hereunder, acknowledges receipt of Government property, as described hereunder, and affirmed that I shall be held responsible for its safe-keeping and proper use. In case of loss or damage, I shall be Liable for payment-in-Name/Print: Carlo Brank Division Division Division Date TION cr-00038 Signature DESCRIPTION: full of the acquisition cost.

has been issued a firearm, as described above, and is authorized to keep/carry such firearm on a twenty-four (24) basis. This is to certify that:

CERTIFICATION

In-charged of Armory Division/Date Timestor of Public Safety, GNMI Date

FIREARM RETURNED TO ARMOR

Returned By: O	Receped By:	Same—ssued weapon	12	2	
Time:	Time:	Operable			
Date:	Date:	Inoperable TREMARKS:			

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF PUBLIC SAFETY

FIREARM INSPECTION

	(LAST)	(FIRST)	
RANK:	TYPE 0	TYPE OF FIREARM <u>:</u>	
5	PROPER SINGLE AND DOUBLE ACTION	G000	FAIR POOR
5)	PROPER CYLINDER ROTATION AND LATCHING	0000	FAIR POOR
3	FIRING PINS AND SIGHTS SHEARED PIN OR DAMAGED SIGHTS)	0005	FAIR POOR
₹	BORE AND CHAMBERS (RUST, DIRT, PIN OR DAMAGED SIGHTS)	0000	FAIR POOR
9	CARTRIDGES (DENT, PRIMER, NON-CRIMPED PROJECTILE)	0000	FAIR POOR
9	PROPER SLIDE ACTION AND EJECTION	0000	FAIR POOR
INSPECTED BY:	ED BY:		RANK:
ECT.	ECTOR'S SIGNATURE:		
			,

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APPROVED BY (SUPERVISOR)